THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.31071 & 31838 of 1997

Dated 30-04-2007

W.P.No.31071 of 1997
Between:
D.Ghouse Mohideen.

..... PETITIONER

AND

The Vice Chairman & Managing Director, A.P.State Road Transport Corporation, Musheerabad, Hyderabad & others.

.....RESPONDENT

W.P.No.31838 of 1997
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THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.31071 & 31838 of 1997

COMMON ORDER:

W.P.No.31071 of 1997 is filed seeking a declaration from this Court that the action of the respondents, in not assigning seniority to the petitioner in the post of Junior Assistant (Materials) in Tirupathi Region/Nellore Zone in accordance with the option exercised by him on 05-08-1993 and
06-01-1995, is illegal and to consequently direct the respondents to assign seniority to the petitioner in the cadre of Junior Assistant (Materials) with effect from 22-08-1990.

W.P.No.31838 of 1997 is filed questioning the proceedings of the second respondent dated 15-11-1997 in repatriating the petitioner to the Kadapa Zone.

Both these writ petitions were heard together and are now being disposed of by a common order.

Heard Sri G.Vidya Sagar, learned counsel for the petitioner. Neither the standing counsel for the respondent-Corporation is present nor is there any representation on his behalf. No counter affidavit is filed on behalf of the respondent-Corporation.

Facts, in brief, are that the petitioner joined the respondent-Corporation on his being selected to the post of Junior Assistant (Materials) vide office order dated 07-12-1989. The said order was not given effect to and, on petitioner's representation dated 17-04-1990, he was appointed vide proceedings dated 22-08-1990 as Junior Assistant (Materials) and posted at the Regional Stores, Kadapa. The Regional Stores, Kadapa was hitherto under the

Krishnadevaraya Region and the petitioner joined duty thereat on 04-09-1990. Soon thereafter, the petitioner requested that he be transferred to Nellore (Vikramsimha region). The petitioner was instead transferred, vide proceedings dated 31-10-1990, to Tirupathi itself. The said order of transfer clearly stipulates that the petitioner would not be entitled to transfer benefits as the transfer was at his request. The petitioner joined at Tirupathi on 12-11-1990. On the next day i.e. 13-11-1990, the Regional Manager (Vikramasimha Region) issued orders transferring him to the Retrading Shop, Nellore. Petitioner submitted a representation on 30-11-1990 that his request to be posted at Nellore be cancelled since he was already working at Sub-Stores, Tirupathi.

The Nellore Region was formed in August, 1990 and the petitioner submitted a representation on 05-08-1993 exercising his option to be posted at Nellore Region, APSRTC Workshop, Tirupathi. The Zonal set up was formed in January 1995 consisting of Nellore, Ongole and Tirupathi regions. The petitioner submitted his option form on 06-01-1995 and was informed, vide proceedings dated 08-04-1996, that the matter was under examination. Subsequently proceedings dated
15-11-1997 was issued repatriating the petitioner to Kadapa. On the ground that his name was not reflected in the seniority list of Nellore Zone, the petitioner filed W.P.No.31071 of 1997 and questioning the repatriation proceedings dated
15-11-1997, he filed W.P.No.31838 of 1997.

This Court, by order dated 01-12-1997, directed status quo and pursuant thereto, the petitioner has been working at Tirupathi even till date.

Sri G.Vidya Sagar, learned counsel for the petitioner, would

submit that, ordinarily, when vacancies are available, an option exercised by an employee to be posted in a newly established region/zone is accepted by the respondent-Corporation and, since the petitioner had exercised his option to be posted at Nellore Zone, the respondents had acted contrary to law in issuing proceedings dated 15-11-1997 rejecting his request without assigning any reasons and repatriated him back to Kadapa. Learned counsel would submit that, while the petitioner was posted at Tirupathi and was directed to join duty on 12-11-1990, his name has neither been shown in the seniority list of Kadapa zone nor in the Nellore zone till date and that, while employees juniors to him in both the zones were promoted as Senior Assistant (Materials), he has been illegally denied being considered for promotion to the post of Senior Assistant (Materials). Learned counsel would emphasis that the order of repatriation dated 15-11-1997 is a clear case of victimization and that the petitioner has been needlessly harassed only for his having exercised his judicial remedies in invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

In the absence of a counter affidavit filed on behalf of the respondent-Corporation, it is not clear whether transfer of employees in a zone is restricted only to that zone or whether the Corporation continues to exercise the power to transfer its employees from one zone to another. The fact, however, remains that the petitioner has exercised his option to be posted in the Nellore zone and it is his specific case that, only because he had filed W.P.No.31071 of 1997, his request was not favourably considered and he was repatriated to Kadapa zone.

In the light of the specific assertion that the petitioner has not

been shown either in the seniority list of the Kadapa Zone or in the Nellore Zone and that his repatriation to Kadapa, by order dated 15-11-1997, is only because he has invoked the jurisdiction of this Court, ends of justice would be met if the impugned proceedings dated 15-11-1997 are quashed on the ground that no reasons have been assigned by the authorities for rejecting the petitioner's request to be posted at Nellore Zone in accordance with the option exercised by him and the respondents are directed to consider his request for being posted in the Nellore Zone, keeping in view the option exercised by him earlier on 05-08-1993 and bearing in mind that he was transferred to Tirupathi, vide proceedings dated 31-10-1990, that he joined duty at Tirupathi on 12-11-1990 and that he has been continuing at Tirupathi ever since.

While no provision has been brought to the notice of this Court which prohibits the Corporation from exercising its power to transfer its employees from one zone to another zone, I consider it appropriate to direct the respondents to retain the petitioner at Tirupathi till the option exercised by him on 05-08-1993 is considered afresh and necessary orders are passed thereupon in accordance with law. The direction to the respondents to retain the petitioner at Tirupathi is made in the peculiar facts and circumstances of the present case that the petitioner has been working at Tirupathi for a period of 17 years from 1990 and accepting his option would necessitate his being continued in Nellore Zone itself.

The entire exercise, in this regard, shall be completed within a period of four months from the date of receipt of a copy of this order. Needless to state that the relief sought for by the petitioner that his case be considered for promotion to the post of Senior

Assistant (Materials) would depend on the outcome of the option form dated 05-08-1993 being considered and necessary orders passed thereupon by the first respondent.

Both the Writ Petitions are accordingly disposed of. No order as to costs.

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30-04-2007

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